NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 1735, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1735) to authorize appropriations for fiscal year 2016 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the time until 2:30 p.m. will be for debate only and equally divided between the bill managers or the designees.

The Senator from Arizona.

AMENDMENT NO. 1463

(Purpose: In the nature of a substitute)

Mr. MCCAIN. Mr. President, I call up amendment No. 1463, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 1463.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in the RECORD of June 2, 2015, under ''Text of Amendments.'')

ORDER FOR RECESS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate stand in recess from 1 p.m. until 2 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, it is my pleasure to rise with my friend and colleague from Rhode Island to speak about the National Defense Authorization Act for Fiscal Year 2016. For 53 consecutive years, Congress has passed this vital piece of legislation, which provides the necessary funding and authorizes—I repeat, authorizes—our military to defend the Nation. The NDAA is one of few bills in Congress that continues to enjoy bipartisan support year after year. This is a testament to the legislation's critical importance to our national security and the high regard with which it is held by the Congress.

Last month, the Senate Armed Services Committee voted 22 to 4 to approve the NDAA, an overwhelming vote that reflects the committee's proud tradition of bipartisan support for the brave men and women of our armed services.

I thank the committee's ranking member, the Senator from Rhode Island. Despite his failure of education at our Nation's military academy, I appreciate the thoughtfulness and bipartisan spirit with which he approaches our national security. It has been a pleasure to work with Senator REED over the last few months and years on this legislation and today as we appear on the floor on behalf of this legislation.

We have worked through some of the toughest issues facing our military today. We have our differences on some aspects of this legislation, but those differences have never interfered with the search for common ground and consensus. This is a much better bill thanks to the Senator from Rhode Island.

I also thank the majority leader, the Senator from Kentucky, for his commitment to resuming regular order and bringing the NDAA to the floor this week. Under the leadership of the Senator from Kentucky, the Senate will be able to take up this critical national security legislation on time, allowing for thoughtful consideration and amendments and giving our military the certainty they need to plan and execute their missions.

That stands in stark contrast to the last 2 years under Democratic leadership, when this body failed to take up the NDAA until the very end of the year, at the last minute, with no amendments allowed.

Just yesterday the Democratic leader said considering this vital Defense bill is just a ''waste of time''—waste of time. Those comments must be very disappointing to the servicemembers, retirees, and their families in his home State of Nevada who clearly understand the importance of this legislation.

The fiscal year 2016 NDAA is a reform bill. It tackles acquisition reform, military retirement reform, personnel reform, commissary reform, headquarters and management reform. This legislation delivers sweeping defense reforms that can enable our military to rise to the challenges of a more dangerous world, both today and in the future. The Armed Services Committee identified $10 billion of excess and unnecessary spending from the President's defense budget request, and we are reinvesting it in military capabilities for our war fighters and reforms that can yield long-term savings for the Department of Defense. We did all of this while upholding our commitments to our servicemembers, retirees, and their families.

This legislation is a reflection of the growing threats we face in the world. Over the past few months, the Senate Armed Services Committee has received testimony from many of America's most respected statesmen, thinkers, and former military commanders. These leaders had a common warning: America is facing the most diverse and complex array of crises since the Second World War. Just consider some of the troubling events that have transpired over the past year.

In Ukraine, Russia has sought to redraw an international border and annex the territory of another sovereign country through the use of military force. It continues aggressively to destabilize Ukraine, with troubling implications for security in Europe. Yet the President continues to refuse to provide Ukraine with the defensive weapons they need and have repeatedly requested to defend their sovereign nation from Russia's onslaught.

In the Middle East, a terrorist army, with tens of thousands of fighters, many holding Western passports, has taken over a vast swath of territory and declared an Islamic State in the heart of one of the most strategically important parts of the world. Nearly 3,000 U.S. troops have returned to Iraq to combat this threat, with U.S. aircraft flying hundreds of strike missions a month over Iraq and Syria. Unfortunately, as recent reports suggest, nearly 75 percent of those air missions never even dropped weapons, and meanwhile ISIS is taking territory on the ground, most recently in Ramadi and Palmyra.

At the same time, amid negotiations over its nuclear program, Iran continues to pursue its ambitions to challenge regional order in the Middle East by increasing its development of ballistic missiles, support for terrorism, training and arming of pro-Iranian militant groups, and other malign activities in places such as Iraq, Syria, Lebanon, Gaza, Bahrain, and Yemen.

Yemen has collapsed, as a Shia insurgency with ties to the Iranian regime has toppled the U.S.-backed government in Sana'a. Al Qaeda continues to use parts of the country to plan attacks against the West, the U.S. Embassy has been evacuated, and a U.S.-backed coalition of Arab nations has intervened militarily to reverse the gains of the Houthi insurgency and to restore the previous government to power.

Libya has become a failed state, beset by civil war and a growing presence of transnational terrorist groups, such as Al Qaeda and ISIL, similar to Afghanistan in 2001.

In Asia, North Korea continues to develop its nuclear arsenal and ever-more capable ballistic missiles, and late last year it committed the most destructive cyber attack ever on U.S. territory.

China is increasingly taking coercive actions to assert expansive territorial claims that unilaterally change the status quo in the South and East China Seas and raise tensions with U.S. allies and partners, all while continuing to expand and modernize its military in ways that challenge U.S. access and freedom of movement in the western Pacific. A recent report in the Wall Street Journal described how China has taken steps to militarize the vast land features that it is actively reclaiming in the South China Sea.

Unfortunately I could go on, but these are just some of the growing threats our Nation faces—threats that are far more serious than they were a year ago and significantly more so than when Congress passed the Budget Control Act in 2011. That legislation arbitrarily capped defense spending

and established the mindless mechanism of sequestration, which was triggered in 2013. As a result, with worldwide threats rising, we as a nation are on a course to cut nearly $1 trillion of defense spending over 10 years.

The Committee on Armed Services has conducted wide-ranging bipartisan oversight on the effects of sequestration-level spending on our national defense, and every single military and national security leader who has testified before the committee this year has denounced sequestration and urged its repeal as soon as possible. Indeed, each of our military service chiefs testified that continued defense spending at sequestration levels would put American lives at risk. I want to repeat to my colleagues: Our armed services leaders have told the Armed Services Committee that American lives are at risk if we continue mindless sequestration. Don't we care about the risks and the lives of the young men and women who have volunteered to serve in our military? Don't we care about them?

I urge my colleagues in the Senate and in the House to come together and repeal sequestration, and however that is accomplished, I will be glad to discuss, but our first priority has always been and always will be American security, our national security and the lives of the men and women who have volunteered to defend it.

Unfortunately, this legislation doesn't end sequestration. Believe me, our committee would have done so if the NDAA were capable of it, but it is not. The NDAA is a policy bill. It deals only with defense and national security issues. It does not spend a dollar. It provides the Department of Defense and our men and women in uniform with the authorities and support they need to defend the Nation.

Although the committee could not end sequestration, we did the most we could to authorize necessary levels of funding for the Department of Defense and our men and women in uniform. As a result, the NDAA fully supports President Obama's budget request of $612 billion for national defense, which is $38 billion above the spending caps established by the Budget Control Act. Let me repeat that. This legislation gives the President every dollar of budget authority he requested. The difference is our legislation follows the Senate budget resolution and funds that $38 billion increase through overseas contingency operations—or OCO—funds.

This is not my preferred option. It is not anybody's preferred option that I know of. I recognize that reliance on OCO spending limits the ability of the Department of Defense to plan and modernize our military. For this reason, the committee included a special transfer authority in this legislation that allows the Department of Defense to transfer the additional $38 billion from OCO to the base budget in the event that legislation is enacted that increases the statutory limitations on discretionary defense and nondefense spending in proportionately equal amounts.

This was the product of a bipartisan compromise, and it was the most we could do in the NDAA to recognize the need for a broader fiscal agreement without denying funding for our military right now. Nevertheless, the White House threatened yesterday to veto this legislation over its additional OCO spending and because the Congress has not provided for similar increases in nondefense spending. This is misguided and irresponsible. With global threats rising, how does it make any sense to oppose a defense policy bill—legislation that spends no money but is full of vital authorities that our troops need—for a reason that has nothing to do with national defense spending? The NDAA should not be treated as a hostage in a budget negotiation.

The political reality is that the Budget Control Act was signed by the President and remains the law of the land. So faced with a choice between OCO money and no money, I choose OCO. And multiple senior military leaders who testified before the Armed Services Committee this year said they would make the same choice for one simple reason: This is $38 billion of real money that our military desperately needs and without which, our top military leaders have said, they cannot succeed. Military leader after military leader has testified before our committee that they cannot carry out their obligations in their various commands to defend the Nation if the Budget Control Act—also known as sequestration—continues.

My message is simple: Let's have our fights over government spending, but let's keep those fights where they belong—in the appropriations process, where money is actually spent. The NDAA is not the place for it. If the President and some of my colleagues oppose the NDAA due to concerns over nondefense spending, I suspect they will have a very difficult time explaining and justifying that choice to Americans who increasingly cite national security as a top concern.

I care about nondefense spending. I really believe we need to fund many of the areas, such as the FBI, Border Patrol, and others. But to somehow equate that with national defense with the world as we see it today is either out of ignorance or partisanship—I don't know which, but neither is a valid ambition or reason.

The NDAA is a policy bill, and this year's version is an incredibly ambitious one. It advances major reform initiatives that can make more efficient use of our precious taxpayer dollars while increasing military capability for our warfighters.

In recent years, the Defense Department has grown larger but less capable, more complex but less innovative, more proficient at defeating low-tech adversaries but more vulnerable to high-tech ones. No one is more cognizant of this unfortunate fact than those of us whose responsibility it is to oversee our defense budget on the Armed Services Committee.

It is a top priority for me, my colleague from Rhode Island, as well as all of my fellow committee members to ensure that every dollar we spend on defense is used wisely, efficiently, and effectively. The fiscal year 2016 NDAA makes important contributions to this reform effort. This legislation contains sweeping acquisition reform.

Many of our military's challenges today are the result of years of mistakes and wasted resources. One recent study found that the Defense Department had spent $46 billion between 2001 and 2011 on at least a dozen programs that never became operational. I will repeat that—$46 billion on programs that never became operational. What is worse, I am not sure who, if anyone, was ever held accountable for these failures. At a hearing 2 years ago, I asked the Chief of Naval Operations who was responsible for $2.4 billion in cost overruns on the USS *Gerald R. Ford* aircraft carrier. He had no answer.

In today's vast acquisition bureaucracy where personnel and project managers cycle through rapidly, everyone is accountable and no one is accountable. We need acquisition reform now because our senior leaders must be held accountable for responsible stewardship of taxpayers' dollars.

But this is not just about saving money. Acquisition reform is needed immediately to preserve U.S. technological and military dominance and is therefore a national security imperative. Over the last decade, our adversaries have invested heavily in modernizing their militaries with a focus on anti-access and area-denial technologies designed specifically to counter American military strengths. Meanwhile, an acquisition system that takes too long and costs too much is leading to the erosion of America's defense technological advantage. If we continue with business as usual, I fear the United States could lose this advantage altogether. In short, our broken defense acquisition system itself is a clear and present danger to the national security of the United States.

The acquisition reforms in this legislation center on five principle objectives.

First, the legislation establishes effective accountability for results. We give greater authority to the military services to manage their own programs, and we enhance the role of the service chiefs in the acquisition process. In exchange for greater authority, the bill demands accountability and creates new mechanisms to deliver it. Service chiefs, service secretaries, service acquisition executives, and program managers would sign up to binding management, requirement, and resource commitments.

The bill also creates new incentives for the services to deliver programs on

time and on budget. If military services fail to manage a program effectively, they will lose authority and control over that program, and they will be assessed an annual cost penalty on their cost overruns, with those funds directed toward acquisition risk reduction efforts across the Department.

Second, the legislation supports the use of flexible acquisition authorities and the development of alternative acquisition paths to acquire critical national security capabilities. The bill establishes a new streamlined acquisition and requirements process for rapid prototyping and rapid fielding within 2 to 5 years. It expands rapid acquisition authorities for contingency operations and cyber security missions, and the legislation allows the Secretary of Defense to waive unnecessary acquisition laws to acquire vital national security capabilities.

Third, the NDAA improves access to nontraditional and commercial contractors. To give our military the necessary capabilities to defend the Nation, the Department of Defense must be able to access innovation in areas such as cyber, robotics, data analytics, miniaturization, and autonomy—the innovation that is much more likely to come from Silicon Valley, Austin or Mesa than Washington. But our broken acquisition system, with its complex regulation and stifling bureaucracies, is leading many commercial firms to choose not to do business with the Defense Department or to limit their engagement in ways that prevent the Department from accessing the critical technologies these companies have to offer. The NDAA creates incentives for commercial innovation by removing barriers to new entrants into the defense market. By adopting commercial buying practices for the Defense Department, the legislation makes it easier for nontraditional firms to do business with the Pentagon. The legislation also ensures that businesses are not forced to cede intellectual property developed at their expense to the government.

Fourth, the NDAA streamlines the process for buying weapons systems, services, and information technology by reducing unnecessary requirements, reports, and certification. The legislation retains positive reforms made in the Weapons System Acquisition Reform Act of 2009, but streamlines processes to support more rapid and efficient development and delivery of new capabilities. It would also establish an expert review panel to identify unneeded acquisitions regulations.

Fifth, the legislation reinvigorates the acquisition workforce in several ways, including by establishing several direct-hire authorities for science and technology professionals to join the acquisition workforce. The legislation seeks to improve the attractiveness of acquisition functions to skilled military personnel through credits for acquisition-related assignments, creation of an enhanced dual-track career path to include acquisition, and increased business and commercial training opportunities.

In a Statement of Administration Policy released yesterday, the White House asserted that transferring some acquisition authority back to the services is somehow inconsistent with the Secretary of Defense's exercise of authority, direction, and control over all of DOD's programs and activities. I could not disagree more with this assertion. What this legislation does is merely switch who does what in certain circumstances from different people who all directly report and serve under the authority, direction, and control of the Secretary of Defense. In this legislation, for a limited number of programs to start with, the Secretary of Defense will look to the service Secretaries directly for management of these acquisition programs rather than looking to the Under Secretary of Defense for Acquisition, Technology, and Logistics or AT and L. This is not usurpation of the Secretary of Defense's power. It is called streamlining of authorities and reducing layers of unnecessary bureaucracy. There is a section in the legislation that would allow the Secretary of Defense to continue to rely on more layers of management if he chooses but only if he certifies to Congress that this makes sense. There simply is not any undermining of the Secretary of Defense's authority here.

Another concern raised has been that the transfer of milestone decision authority to the services would reduce the Secretary of Defense's ability through AT and L to guard against unwarranted optimism in program planning and budget formulation. Unwarranted optimism is indeed a plague on acquisition, and there is not a monopoly of that in the services. Yet there is nothing in this bill that overrides the requirement to use better cost estimates from the Office of Cost Assessment and Program Evaluation. In fact, new incentives and real penalties imposed on the services in the bill are designed to put some of this optimism in check.

There is also belief manufactured in parts of the Department that the current system is working. They are saying the current system is working. That is laughable. The statistics are improving, first of all, because Secretary Gates canceled over 25 programs. It is easier to make your numbers when you are unilaterally disarming and buying less. Still, all of the programs that are left under the U.S. Defense Department AT and L management have over $200 billion in cost overruns. I want to repeat—$200 billion in cost overruns under the current setup. That is why it is imperative we change it. There are a lot of words to describe this, but success is not one of them. The USD AT and L is trying to have it both ways: claiming credit for all the improvements in the acquisition system while blaming the services for its long list of failures. This is exactly the problem this legislation is trying to address—blurred lines of accountability inside the Defense Acquisition System that allow its leaders to evade responsibility for results.

Then, there is the issue of process and documentation. Defenders of the current acquisition system say they have it right. They might have it right if our adversary were the old Soviet Union and their centralized planned economy. The reality for the modern world is that under USD AT and L management process takes too long and adds costs and looks like it was designed by a Soviet apparatchik. For example, an Army study looked at the time it would take to go through all of the U.S. Defense Department AT and L reviews and buy nothing. What was the answer? Ten years to buy nothing.

The Government Accountability Office looked at the much wanted milestone reviews that the office of the Secretary of Defense is touting as a success. Just one review takes on average 2 years. A similar review at the Missile Defense Agency takes about 3 months. Our adversaries are not shuffling paper, they are building weapons systems. It is time for us to do the same. The first step is to eliminate unnecessary calls for data from those outside the program office, just as David Packard recommended 30 years ago. This legislation does that.

The acquisition reforms in this bill are sweeping, but there is much more work to do to transition what is in essence a Cold War management system into one that is more agile and nimble to meet the challenges of a globalized information age. This legislation marks the beginning of a multiyear process to change the acquisition system to be more open to next-generation technologies that can enable the United States to outpace its adversaries.

Acquisition reform is part of a larger effort to reform the management of the Department of Defense. This bill seeks to ensure that the Department and the military services are using precious defense dollars to fulfill their missions and defend the Nation, not to expand their bloated staffs. While staff at Army headquarters increased 60 percent over the past decade, the Army is now cutting brigade combat teams. The Air Force avoided mandated cuts to their headquarters personnel by creating two new headquarters entities, even as it complained it had insufficient personnel to maintain combat aircraft.

I want to repeat that. The Air Force mandated cuts of headquarters personnel, not reducing by a single person but by creating new headquarters entities, even as it complained it had insufficient personnel to maintain combat aircraft. From 2001 to 2012, the defense civilian workforce grew at five times the rate of the Active-Duty military. I repeat that. From 2001 to 2012, the defense civilian workforce grew at five

times the rate of the Active-Duty military.

This legislation initiates a reorganization of the Department of Defense in order to focus limited resources on operations rather than administration, to ensure military personnel can develop critical military skills, and to stabilize organizations and programs. The NDAA mandates a 30-percent cut in funding for headquarters and administrative staff over the next 4 years. These reductions generate $1.7 billion in savings for fiscal year 2016. As the Department implements these reductions, this bill authorizes the Secretary of Defense to retain the best talent available, rather than just the longest serving.

Contrary to the Statement of Administration Policy that the White House issued yesterday, the reductions to Pentagon overhead and management staff are neither arbitrary nor across the board. These cuts are targeted to administrative functions, but they do not inflict unintended harms on functions such as mortuary affairs or sexual assault prevention. The legislation does not seek to micromanage the Defense Department. It cuts money from broad headquarters and administrative functions, but it defers to the Secretary of Defense on how, what, and where exactly to cut, and it instructs him to devise a plan to make these cuts wisely.

Beyond management reform, the NDAA also puts forward wide-ranging and unprecedented reform to the military retirement system. Under the current 70-year-old system, 83 percent of servicemembers leave the service without any retirement assets. This system excludes the vast majority of current servicemembers who will not complete 20 years of uniformed service, including many veterans of the wars in Afghanistan and Iraq.

The legislation creates a modernized retirement system and extends retirement benefits to the vast majority of servicemembers through a new plan offering more value and choice. Under the new plan, 75 percent of servicemembers would get retirement benefits. In many cases, the overall benefit of those serving at least 20 years will be greater than the current system. This new modernized retirement system will apply to members first joining a uniformed service on or after January 1, 2018. Current members are grandfathered but may choose to be covered by the new plan. The retirement reforms in this legislation will enable servicemembers to save for retirement earlier in their careers, create a new incentive to recruit millennials, and increase retention across the services. That is why these reforms are supported by the Veterans of Foreign Wars, the Reserve Officers Association, the National Guard Association, the Enlisted Association of the National Guard, and the Air Force Association, among others.

In addition to retirement reform, the NDAA focuses on sustaining the quality of life of our military servicemembers, retirees, and their families. The legislation authorizes a 1.3-percent pay raise for members of the uniformed services in the grade O–6 and below. The bill authorizes $25 million to support local educational agencies that serve military dependent children, and $5 million in impact aid for schools with military dependent children with severe disabilities.

The NDAA includes many provisions to improve the military health care system and TRICARE. The legislation allows the TRICARE beneficiary up to four urgent care visits without making them get a preauthorization. It requires DOD to establish appointment access standards and wait-time goals, and if a patient can't get an appointment within standards, the military hospital must offer an appointment in the TRICARE network. The legislation requires DOD to focus more on health care quality, patient safety, and beneficiary satisfaction by making them publish health outcome measures on their Web sites, and it requires a plan to improve the delivery of pediatric health care, especially for children with special needs. Furthermore, as military families frequently move from one location to another, their health care coverage must be seamless and portable, but too often families have to leap over several hurdles to get health care in a new location. This has to stop. We take care of that problem in this legislation.

The NDAA also builds on the work of the past few years to prevent and respond to military sexual assault. The legislation contains a number of provisions aimed at strengthening the authorities of special victims' counsel to provide services to victims of sexual assault. The legislation also enhances confidential reporting options for victims of sexual assault and increases access to timely disclosure of certain materials and information in connection with the prosecution of offenses.

This is a fiscally responsible NDAA. I have said that my top priority as chairman of the Senate Armed Services Committee is to repeal sequestration and return to a strategy-driven defense budget. But I have also made clear that repealing sequestration must be accompanied by a vigorous effort to root out and eliminate Pentagon waste. Given the fiscal constraints and global challenges confronting our military, we simply cannot afford to waste precious defense dollars.

Our committee identified over $10 billion in excessive and unnecessary spending in the President's budget request: headquarters and administrative overhead, troubled information technology programs, weapons systems that are over budget and underperforming, among other items. The NDAA reinvests those savings in providing critical military capabilities for our warfighters and meeting unfunded priorities of our service chiefs and combatant commanders.

Even as challenges to maritime security increase in the Middle East and the western Pacific, our Navy remains well below its fleet-size requirement of 306 ships. Moreover, our shipbuilding budget will experience even greater pressure at the end of this decade, as the Navy procures the replacement for the Ohio-class ballistic missile submarine. The NDAA directs savings identified in the budget request to accelerate Navy modernization and shipbuilding to mitigate the impacts of the *Ohio*-class replacement and to increase the Navy to meet rising threats.

The legislation adds $800 million for additional advanced procurement for *Virginia*-class submarines, and $200 million for the next amphibious assault ship. The bill provides incremental funding authority for one additional Arleigh Burke-class destroyer. The bill accelerates the Navy LX(R) Amphibious Ship Program, shipbuilding for the afloat forward staging base, and procurement of the first landing craft utility replacement.

The NDAA upgrades an additional guided missile destroyer with ballistic missile defense capability and funds advanced undersea payloads for submarines.

Across the services, our military faces dangerous strike fighter capacity shortfalls. For example, we have seen delivery of the F–35 Joint Strike Fighter fall well short of projections, even as the Air Force has retired hundreds of aircraft.

Indeed, the President's budget request proposed cutting the Air Force down to 49 fighter squadrons, of which less than half would be fully combat mission ready. The NDAA addresses these shortfalls, and it is all the more urgent in view of the ongoing and anticipated operations in Iraq and Syria against ISIL, as well as a potential delay of force withdrawals from Afghanistan.

The NDAA fully restores the planned retirement of the A–10 aircraft. The Air Force itself has said in its posture statement this year:

> There was a time when the Air Force could trade some capacity in order to retain capability. But we have reached the point where the two are inextricable; lose any more capacity and the capability will cease to exist.

The Armed Services Committee agrees. That is why divesting the A–10 capability at this time incurs unacceptable risk in the capacity and readiness of the combat air forces without a suitable replacement available. The NDAA authorized procurement funding for 12 additional F–18 Super Hornets for the Navy and 6 additional F–35B Joint Strike Fighters for the Marine Corps. The legislation also procures an additional 24 MQ–9 Reaper unmanned aircraft for the Air Force to support increased combatant commander requirements for medium-altitude intelligence, surveillance, and reconciliation support.

The committee was similarly concerned about munitions capacity

across the services. So the NDAA adds funding for additional PAC–3 missiles for ballistic missile defense and additional AMRAAM missiles. The legislation also increases Tomahawk missile production to the minimum sustaining rate and procures TOW tube-launched, antitank missiles to mitigate shortfalls for the Marine Corps.

The NDAA supports modernization across the services. The legislation invests in lethality by enhancing the firepower of Stryker combat vehicles and increasing the survivability of the Apache attack helicopter against new threats. The NDAA fully supports the President's request for the F–35 Joint Strike Fighter Program and provides all executable funding for the Long Range Strike Bomber Program.

In addition, the legislation authorizes $6.1 billion for *Virginia*-class submarines, $3.5 billion for Arleigh Burke-class destroyers, and $1.4 billion for the *Ohio*-class replacement program.

While the NDAA supports our military commanders' most urgent priorities, the bill also contains rigorous oversight measures to prevent further cost growth in major acquisition programs, including the F–35 Joint Strike Fighter, the *Ford*-class aircraft carrier, and a littoral combat ship.

As adversaries seek to counter and thwart American military power, the NDAA looks to the future and invests in the technologies that will maintain America's military technological superiority. The NDAA provides $400 million in additional funding to support the so-called third offset strategy to outpace our emerging adversaries. The legislation funds a cyber vulnerability assessment, a new initiative to enable the services to begin evaluating all major weapons systems for cyber vulnerabilities. It also increases investment in six breakthrough technologies: cyber capabilities; low-cost, high-speed munitions; autonomous vehicles; undersea warfare; intelligence data analytics; and directed energy.

Similarly, our Nation has only begun to realize the potential of unmanned combat aircraft, especially in a maritime environment. In the past 2 years, the Unmanned Combat Air System Demonstration Program, or UCAS–D, has achieved a number of historic firsts: the first carrier-based catapult launch, the first arrested landing on a carrier, the first cooperative operations with manned aircraft aboard a carrier, and the first autonomous aerial refueling.

The NDAA funds the remaining research and development work to be completed on UCAS–D, while directing the Secretary of Defense to develop competitive prototypes that move the Department toward a carrier-based, unmanned, long-range, low-observable, penetrating strike aircraft that can enhance the capability of the carrier air wing to meet future threats.

The NDAA supports our allies and partners with robust training and assistance initiatives. The legislation authorizes nearly $3.8 billion in support for the Afghan National Security Forces as they continue to defend their country and the gains of the last decade against our common enemies. The legislation also authorizes the provision of defensive lethal assistance to Ukraine to help it build combat capability and defend its sovereign territory.

The legislation supports efforts by Lebanon and Jordan to secure their borders against ISIL, and it creates a new initiative to provide equipment, supplies, and training to Southeast Asian nations in order to support them in building maritime domain awareness capabilities and addressing growing maritime sovereignty challenges in the South China Sea.

Finally, this legislation contains a bipartisan compromise on how to address the challenge of the detention facility at Guantanamo Bay. President Obama has said from day one of his Presidency that he wants to close Guantanamo Bay. But 6½ years into his administration, the President of the United States has never provided a plan to do so.

The NDAA would require the administration to provide a comprehensive plan to the Congress on how it intends to close Guantanamo, which would then have to be approved by both Houses of Congress. That plan would have to include a case-by-case determination on the disposition of each detainee at Guantanamo Bay, including a discussion of the legal challenges of bringing detainees to the United States and any additional authorities that might be needed.

The plan would also have to address how the Department would ensure the continued detention and intelligence collection from future combatants captured under the laws of war. If such a plan is approved, the Congress would provide the President the authority to proceed with the closure of the facility. If the Congress does not approve the plan, nothing would change. The ban on domestic transfers would stay in force, and the certification standards for foreign transfers included in the NDAA would remain.

This is an ambitious piece of legislation. It recognizes that in order to ensure that the Department of Defense is prepared to meet our present and future national security challenges, we must champion the cause of defense reform, rigorously root out Pentagon waste, and invest in modernization and next-generation technologies to maintain our military technological advantage.

America has reached a key inflection point. The liberal world order that has been anchored by U.S. hard power for seven decades is being seriously stressed and with it the foundation of our security and prosperity. It does not have to be this way. We can choose a better future for ourselves but only if we make the right decisions now to set us on a better course. That is what this legislation is all about—living up to our constitutional duties to provide for the common defense, increasing the effectiveness of our military, restoring America's global leadership, and defending a liberal world order.

This legislation is a small step toward accomplishing those goals. But it is an important step that the Congress must take now and take together. For 53 consecutive years, Congress has passed a National Defense Authorization Act. This year should be no different. I am hopeful that the bipartisan spirit that has carried this legislation for over half a century will prevail once again.

Ultimately, we owe the brave men and women in uniform, many of whom are still in harm's way around the world today, nothing less.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I rise to discuss the fiscal year 2016 national defense authorization bill, which was recently reported out of the Senate Armed Services Committee.

I want to begin by commending the chairman, Senator MCCAIN, for his extraordinary leadership. I also want to reflect—because both the Presiding Officer, the Senator from Alaska, and I had the privilege of being with Senator MCCAIN in Vietnam last week—that to recognize firsthand the heroic service of CDR JOHN MCCAIN is to recognize an extraordinary individual whose service, whose sacrifice, whose valor, whose fidelity to the principles of our military and to our Nation are virtually unique. But more important than that, it is to recognize that after observing the horrors and brutality of war, as few people have, he was able to summon the courage and the capacity to bring two countries together. Without Senator MCCAIN's active participation—not alone but absolutely essential and perhaps the most essential part—the Government of the United States and the Government of Vietnam would not have diplomatic relations today. We would not have been at a university in Vietnam listening to young people talking about their future—a future that is not clouded by war but has the opportunity for peace and prosperity, working with us and working with the world community.

I can't think of any historical examples of individuals working so hard to defeat each other, then so hard to embrace each other, save, of course, General Grant and General Lee. But I know the Senator would be offended by being compared to two West Point graduates, so I will simply say that he has made historic contributions to this country in so many ways. It is no surprise that he has taken the leadership of this committee and made a remarkable contribution. His vision to engage us in a strategic dialogue with some of the most sophisticated and experienced individuals in the country—Henry Kissinger, Madeleine Albright, and a host

of others—gave us the perspective to begin to look at the issues we face in a much more comprehensive and a much more thoughtful way. I have had the privilege of serving on the committee for many years. No one has done that. No one has set the stage so well. And then to bring our DOD witnesses together in that context of both the strategic vision and the operational budgetary requirements was absolutely incredible. All of this has made us better prepared on the committee to write this bill which is before us today.

(Mr. SASSE assumed the Chair.)

Let me also take a moment to thank the professional staff on both sides of the aisle. Their willingness to work together to tackle the hard issues has been the key to this authorization bill. I thank them in advance because their work has just begun. The hours they will spend over the next several days to go through the significant number of amendments—all of that will be unnoticed by many but appreciated certainly by me, the chairman, and all of us on the committee. Thank you.

As the Senator from Arizona pointed out, this is basically a good bill. It has many provisions that were requested by the Department of Defense. It has many necessary reforms. The chairman has highlighted many of them. I think it will further our national security in many dimensions, and most importantly it will provide the training, equipment, and support our men and women in uniform deserve. I will try to focus on some of these important developments.

However, there are some provisions in this bill that cause me concern—indeed, grave concern. One problem, I fear, is the familiar, oft-debated, and very complicated challenge of Guantanamo. While we have had some very carefully crafted compromise language in the bill, there are other provisions that reverse progress, particularly on the overseas transfer of detainees.

We have a number of individuals who have been vetted for overseas transfer—not to the United States—that is not appropriate at this moment—but overseas. I think we have to continue that effort to repatriate these individuals outside of the United States, in areas in which their security and their activities can be appropriately monitored. I will spend a few more minutes—and in a few minutes, I will discuss an amendment that I may propose with respect.

Despite all of these good provisions, however, I was ultimately unable to vote for the bill. After working closely and sincerely, with the leadership of the chairman, I am reluctantly unable to vote for the bill because at the heart, the funding mechanism to provide a significant portion of the resources—$39 billion—is, I think, an unsustainable aspect of the legislation.

As the Senator pointed out, the legislation before us does not end the Budget Control Act's arbitrary caps on spending, and, as he also said, every major military official, every major senior defense official came and told us: We have to end the Budget Control Act caps and the prospect of sequestration. We have not done that.

What the bill does is adopt a device—some have said a gimmick—that uses the overseas spending account to fund base activities of the Department of Defense. As I have indicated and as the chairman has suggested, the one request consistently received—in fact, just a few days ago, the commander of the Pacific forces indicated the same thing—is to end sequestration. We have not been able to do that.

What the President's budget did is he sent up a request for $38 billion above the budget cap levels in the base—not overseas defense spending but in the base. He requested $50.9 billion for contingency operations, overseas operations. We have been funding overseas operations since 9/11. This funding was designed to do what it suggests in the title. We have forces deployed overseas in combat, in contact with our enemies—Afghanistan, Iraq, and elsewhere—and this funding was to provide for those forces and indirectly for our supporting mechanisms, but the key was to support these forces overseas.

Now what we have done—and it was done because we were unable to eliminate the budget caps under the Budget Control Act—is we have taken this OCO account and we have grossed it up dramatically.

This approach has several problems. First, it doesn't solve—in fact, in some cases it complicates the DOD's budget problems. OCO, as I said, was created and should be used for war costs only. OCO has limits and restrictions. There are very strict rules that have to be followed. It is not flexible funds that can be moved around at will.

Defense budgeting needs to be based on a long-term military strategy, which requires the DOD to focus at least 5 years ahead. OCO money is 1-year money. It is just this year. There is no commitment statutorily that it will be available. There is no presumption, because it is in the base, that it will be the starting point of discussions for the next budget. Frankly and obviously, we cannot fight a multigenerational war with 1-year money. And we are in a multigenerational conflict. It has been more than a decade since we started our efforts in the wake of 9/11, and we have challenges that will not resolve themselves in a year. To adopt a major part of our budget, roughly $39 billion, as one-time—supposedly—funds is not a wise, sensible, and appropriate way to fund our security going forward.

Another aspect is it doesn't reduce the deficit; it adds to the deficit. This is all deficit funding, so this is not a way to avoid tough decisions about how we are going to deal with our deficit.

It also does not reach other vital aspects of national security that are housed in domestic agencies which are also critical for our national defense—the FBI, Homeland Security, the Coast Guard. All of these agencies contribute dramatically to our national defense. In fact, particularly with the threat of ''lone wolves''—and that is increasingly more of a concern to all of us—these agencies play an even more significant role in our overall national security. When you are talking about a national security strategy, it is not just the Department of Defense; it is the Department of State and it is engagement overseas.

Again, as we were in Vietnam, we were talking to the Defense Minister, and one of his key priorities is a project to eliminate toxins in Bien Hoa airfield, an airfield we used extensively in Vietnam. To him, that would be a hugely significant indication of our support for their efforts. That is not funded through the Department of Defense; that would be principally funded through the AID. And you could go on and on.

The approach we offer in the bill does not go to the heart of the problem that faces the Department of Defense and every other Federal agency, and that is the BCA caps and the steep cuts that will come into effect if sequestration is invoked. That is the heart of the matter. I offered an amendment in committee to address this problem, and unfortunately it failed. That was one of the reasons I reluctantly—very reluctantly—chose not to support the bill, because there are so many, as the chairman indicated and as I will indicate, important provisions in this bill.

What I tried to do was to say: Let's leave this money on the books, but let's fence it off until we can fix the real problem, which is the Budget Control Act and sequestration, which affects defense and nondefense alike.

In the context of this floor debate, I hope to be able to once again rejoin that issue and ask my colleagues to recognize the heart of the matter—not the consequences affecting defense but the heart of the matter, which is the Budget Control Act.

As I said, this is a bill with many laudatory provisions reflecting in large part bipartisan cooperation. Some of them have been discussed by the chairman, but I would also like to mention them.

The bill provides key funding and authorities for the two major U.S.-led coalition operations: the mission in Afghanistan and the counter-ISIS coalition in Iraq and Syria. Critical to both of these operations are our efforts to build the capacities of our partner nations.

With regard to Afghanistan, the bill includes the full $3.8 billion requested by the President to support the Afghan army, police, and other security forces fighting to secure the hard-fought gains of the past decade and to ensure that Afghanistan does not once again become a safe haven for Al Qaeda or other terrorist groups seeking to attack America.

The bill would also increase the total number of visas for the Afghan Special Immigrant Visa Program by 3,000, providing a path to safety for Afghans who have put themselves at risk by serving as translators or otherwise helping our coalition efforts.

For coalition efforts against ISIS, the bill provides additional funding for training and equipping the Iraqi security forces and other associated forces in Iraq, including the Kurdish Peshmerga and Sunni tribes, who are confronting the threat of ISIS in heavily contested Anbar Province and in other parts of Iraq. It includes $80 million for the Office of Security Cooperation in Iraq. It also provides an additional $600 million for the Syria Train and Equip Fund, to build the capabilities of a vetted, moderate opposition to fight ISIS in Syria. Additionally, $125 million is authorized to reimburse Lebanon and Jordan for operations that help secure their borders against ISIS.

The bill includes funding for an initiative to expand the U.S. military presence and exercises in Eastern Europe, reassuring allies and countering the threat of hybrid warfare tactics like those used by Russia in the Crimea and eastern Ukraine. The bill also authorizes additional military assistance for Ukraine—including lethal assistance—to build the capabilities of Ukrainian security forces to defend against further aggression and ceasefire violations by Russian-backed separatist forces.

With respect to counternarcotics, which is another national security threat, the bill expands an existing authority to permit counternarcotics assistance to the Governments of Kenya, Tanzania, and Somalia. This expansion would allow for additional nonlethal assistance to those nations as they combat illicit trafficking in the region. In Latin America, the bill would provide assistance to support the unified counterdrug and counterterrorism campaign of the Government of Colombia. This assistance remains a key element of our bilateral security operation in Colombia and enables the commander of SOUTHCOM to provide critical enabling support upon request.

The bill also provides an additional $50 million to address unfunded priorities identified by SOUTHCOM, including intelligence, surveillance, and reconnaissance, as well as maritime interdiction support operations in Central America.

As the chairman indicated, the bill adds over $400 million in additional readiness funding for the military services across all branches, Active, Guard, and Reserve. These increases will provide resources for crucial programs aimed at improving our military readiness in many areas, including depot readiness, flying operations, cyber training, reducing insider threat attacks, behavioral health counseling, and other important programs.

With respect to our nuclear deterrence, the committee bill fully authorizes the program for modernizing our triad of sea, ground, and airborne platforms. The last B–52 was produced in the 1960s, and by the time the Long-Range Strike Bomber, its replacement, begins to be fielded in the mid-2020s, the B–52 will be flown in some cases by the grandchildren of its first pilots.

Turning to the undersea deterrent, the current *Ohio*-class submarine, which will ultimately carry upward of two-thirds of our strategic arsenal, is to be replaced by the *Ohio* replacement submarine. If we are to maintain a sea-based deterrent, the current *Ohio* fleet of 14 subs must be replaced starting in 2027 due to the potential for hull fatigue. By then, the first *Ohio* sub will be 46 years old—the oldest submarine to have sailed in our Navy in its history.

Now, the third aspect of our triad—those of our land-based ICBMs—will not need to be replaced until the 2030 timeframe. We have authorized a concept development for replacement of this most responsive leg of the triad which acts as a counterbalance to Russian ICBMs.

As Secretary Carter noted in his confirmation hearing, our nuclear deterrence forms the bedrock of our defense policy. This is an essential mission which must not be neglected.

In the area of technology and innovation, I am pleased this bill takes a number of steps to ensure that DOD has access to the most innovative minds in the private sector and to strengthen DOD's in-house laboratories. It significantly increases funding for university research programs as well as authorizing $400 million to support Secretary Carter's efforts to identify and fund new technologies that will help offset the advancing military capabilities of peer nations, invest in technologies such as lasers, unmanned systems, and undersea warfare.

The bill also supports the DOD's laboratory enterprise by improving their ability to attract and hire the world's best and brightest scientists and engineers. These labs help DOD act as smart buyers and builders of the most advanced weapon systems on the planet and are often underappreciated for their endeavors.

It also improves their ability to build world-class modern research infrastructure, encourages them to hire selected students from friendly foreign nations, and strengthens their ability to partner with industry, allowing small businesses to have access to the great intellectual property coming from DOD labs, as well as access to their research and technical equipment. I believe these policy changes and funding increases will continue to strengthen the technological dominance of our military forces while reducing the costs to build and maintain weapon systems in the future.

There are also specific recommendations on hardware programs that will help the Department to improve management and cope with shortfalls, such as providing an additional 12 F–18 Super Hornets for the Navy and an additional 6 F–35B aircraft for the Marine Corps. These aircraft will help deal with the Department of Navy shortfall in strike fighter aircraft.

It adds $800 million in Virginia-class advance procurement to provide flexibility to begin building Virginia-class boats with the enhanced payload module as soon as that version is ready for production and to help mitigate pressure on shipbuilding funds coming from the Ohio-class replacement program.

It accelerates several other ship programs, including amphibious assault ships, the dock landing ship replacement, the next afloat forward staging base, the new salvage ship/fleet tug replacement, and the landing craft utility replacement.

As the chairman indicated, this bill also includes critical authorities for our men and women in uniform. They are the heart and soul of our military. All the equipment in the world, as sophisticated as it is, will not make the difference that the young men and women who wear the uniform of the United States make each and every day. So this bill includes a 1.3-percent pay raise for most servicemembers, the reauthorization of over 30 types of bonuses and special pays to encourage enlistment and reenlistment in the military, and funds to provide health care to the force, retirees, and their families.

Notably, this bill includes important benefit and compensation reforms either requested by the Department or recommended by the Military Compensation and Retirement Modernization Commission that helps to ensure the long-term viability of the all-volunteer force.

For example, the bill includes a new retirement system for servicemembers joining after January 1, 2018, as recommended by the Commission, which grandfathers in the current force. For most servicemembers, this new system will provide a greater benefit at less cost to the government and will address perhaps the grossest inequity of the current system, as highlighted by the chairman—the fact that 83 percent of all servicemembers leave military service with no retirement benefits at all. This is especially challenging, difficult, and in some cases even galling for those who have deployed multiple times and leave the service simply because they cannot endure the strain any longer. We essentially ask them to choose between retirement benefits or their mental health or the unity of their family. Under the new system contained in our bill, anyone who completes 2 years of service will be eligible to walk away with something.

Notably, the bill does not include the overall TRICARE system recommended by the Commission. We have heard from the President with respect to TRICARE and agree these recommendations require more study. These reforms are vital. In a budget-

constrained environment, with hard spending caps, it is critical we strike the right balance between a military compensation package that provides a high quality of life for military families and training and modernization funding that provides a high quality of service and a ready force.

As senior Department officials have testified, if we don't have enough money to provide our troops the latest technology and the training they need, we are doing them a disservice. When we send them into harm's way under these conditions, that disservice quickly translates into a breach of trust.

The Department has assumed approximately $1.7 billion in savings in its 2016 budget relating to these benefit proposals and $25.4 billion over the entire FYDP. The committee supported these proposals and has redirected that funding to readiness and modernization accounts to restore those deficits. Difficult choices need to be made and this bill makes them. We might not yet have it perfectly right, but as we move through the legislative year, we will continue to work to ensure that we pay our servicemembers a fair wage while delivering the training and equipment necessary to succeed.

This bill begins a process, long overdue, for reviewing different options, for example, for providing the commissary benefit to our servicemembers—another important aspect of quality of life. Included in one of these options is at least the consideration of privatization. I understand some Members may have some difficulty supporting these provisions, but the bill simply requires a number of studies to generate and evaluate new ideas, and a pilot program to test them, without requiring the actual privatization of the system. This is an experiment which I think is worth conducting, and I believe the chairman's leadership on this point was extraordinarily valuable.

The bill also addresses the Department's management of its civilian workforce in two ways—one of which I agree with and one of which I will raise some questions. We have long heard from the Department that it lacks certain authorities to effectively manage its civilian workforce. This bill includes new authorities which will enable civilian managers to more effectively retain their best performing employees while divesting their poorest. These reforms, while painful for some, are sensible and necessary.

However, this bill also mandates a management headquarters reduction of 7.5 percent in 2016 and 30 percent over 4 years. I am concerned that such deep, and at this point generalized, cuts to the civilian workforce may create more problems than it will solve. I am hoping we can take a more careful approach to headquarters reform and look forward to working with my colleagues on this issue as we move through the floor and through the conference to final passage.

Again, as the chairman highlighted, this bill also contains roughly 50 provisions on acquisition reform, and I commend the chairman for his efforts. The provisions will help streamline acquisition processes, allow DOD to access commercial and small businesses, and improve the acquisition workforce. They build on the successes of the reforms led by Chairman MCCAIN and Chairman Levin in the Weapons System Acquisition Reform Act of 2009.

I did have concerns about one provision in this area, and I thank the chairman for working with me to address it. I am sure we will be continuing this discussion of acquisition reform throughout the year and in the future. I expect the Department of Defense will have concerns over some of the provisions as well, so I look forward to working with the chairman and soliciting the best advice from acquisition experts in the government and industry so we can continue to improve our stewardship of taxpayer dollars and deliver the best technologies to our fighting forces.

Now, let me turn to an area of concern which the chairman has highlighted and on which I may be offering an amendment; that is, Guantanamo. Over the past few years, the Senate Committee on Armed Services has led the way on Guantanamo-related issues, giving careful consideration to our detention policies and finding bipartisan solutions.

In certain ways, this bill continues that tradition of bipartisan progress on Guantanamo issues. For example, it includes the authority, carried in our bill over the last 2 years, for the Secretary of Defense to approve the temporary transfer of Guantanamo detainees to a military medical facility in the continental United States to provide medical treatment in a life-threatening emergency, when that treatment cannot be provided on-island without unreasonable or excessive cost. The detainee would be required to return to Guantanamo at the conclusion of the medical treatment.

Most importantly, the bill contains a provision that would clear a path for closing Guantanamo, including the option of bringing detainees to the United States for detention, civil trial, and incarceration. Under this approach, the current prohibitions on Guantanamo transfers to the United States would remain in place until the President submits to Congress a detailed plan on the disposition of these detainees and Congress votes, under expedited procedures, to approve that plan. If Congress approves the plan, the bans on transfers to the United States would be lifted and the President would have the authority to implement this plan for closing Guantanamo.

I particularly want to thank Chairman MCCAIN and Senator MANCHIN, who worked closely to craft this compromise, which was approved by a significant vote in the committee—19 to 7. This is an example of bipartisan work at its best.

At the same time, on other Guantanamo policies, I must note they take us backward. This is particularly the case with regard to overseas transfers of Guantanamo detainees—not transfers into the United States but to third countries. In the fiscal year 2014 National Defense Act, the committee's bipartisan efforts resulted in real progress on overseas transfers, granting the Secretary of Defense more flexible and streamlined authorities for overseas transfers of detainees, consistent with our national security interests and with measures to substantially mitigate the risk of Guantanamo detainees reengaging in terrorist activities.

Unfortunately, the bill before us today would undo that progress and reimpose restrictions which date back to 2013 that include a burdensome checklist of certifications that the Secretary of Defense would be required to fulfill for any overseas transfers and a prohibition on transfers to any country where there was a prior case of detainee recidivism.

These provisions make it nearly impossible to transfer Guantanamo detainees overseas to a third-party country. In fact, during the 3 years these certifications were previously in place, no detainees were transferred under these certification restrictions. During this period, a total of 11 detainees were transferred out of Guantanamo overseas, 6 under an existing national security waiver and 5 under an exception for court-ordered transfers. This is a fraction of the over 30 detainees who have been transferred under the more recent 2014 transfer authority.

These backward-looking restrictions on overseas transfers create an unnecessary roadblock for disposing of the 57 detainees currently at Guantanamo who have been approved for overseas transfer, most of whom were approved nearly 5 years ago. My hope is that we can work with our colleagues across the aisle to craft a compromise that brings us more in line with present law.

Finally, I wish to discuss more in-depth the reason I was unable to support the committee's bill and why I think we need to have a very serious debate on the underlying financing of this legislation.

Our national defense decisions should be based on actual needs, not on spending caps and ways around the spending caps that don't change the BCA but simply use a device—some have labeled a gimmick—to get us money, not to fix the fundamental problem but to get us money.

The President's fiscal year budget 2016 requested $38 billion above the Budget Control Act spending caps. Senator MCCAIN and I wrote a letter to the Budget Committee that also asked to go above those budget caps because we understand the best approach is to put within the base funding of the Department of Defense those functions which are essential, not just to the year-to-year operations but to the long-term

operations of the Department of Defense and to our long-term national security. The President requested this $38 billion be authorized as part of the base budget.

The request from the President also contained—as Presidential requests have contained since 2001–2002—OCO funding; OCO funding being for those unique, we hope, one-of or at least yearly expenditures that we have to make with respect to current operations overseas. That is why this is called the Overseas Contingency Operations. For some time now, the President and all of our Secretaries—Secretary Carter, Secretary Hagel, Secretary Gates, Secretary Panetta, and Secretary Hagel—have implored Congress to end the damaging effects of the Budget Control Act's sequester and spending caps. However, this bill, following the budget resolution, does not clearly address the BCA issue. Instead, it turns to this OCO fund. This mark transfers $39 billion from the base budget to the Overseas Contingency Operations budget, leaving the base at, surprisingly, the BCA level, and it raises several concerns. I mentioned these concerns, but let me mention them again.

First, adding funds to OCO does not solve, and actually complicates, the DOD's budgetary problems. Defense budgeting needs to be based on our long-term military strategy, which requires DOD to plan at least 5 years ahead. When you are doing technology innovation, when you are investing in programs that are not going to come off the shelf in 6 months, you can't rely on 1-year money. It doesn't provide DOD the certainty and stability it needs. It has to have money in the base.

This instability can undercut the morale of our troops and their families. If vital programs are subject to year-to-year appropriations, if they are not considered to be the norm, if they are not where we begin but are sort of put in at the end, that affects the morale and confidence of our military.

It also affects our defense industry partners. If their funding is in the category of Overseas Contingency Operations, that is less certain to them than money that is in the base and will likely remain in the base for 5 years or beyond that they need.

Then, the second aspect of this is that our national security is more than just the Department of Defense. The Department of Defense is critical. Ask Americans: Where does our national defense come from? Well, it is those men and women in uniform. That is absolutely true. But we need domestic agencies. We can't defend the homeland without the FBI, which is funded through the Department of Justice, which will not have access—direct access—in the way we are proposing, to OCO or the Transportation Security Administration that screens individuals coming in or Customs that additionally screens people or the Coast Guard. All of these are in the Department of Homeland Security.

Furthermore, without adequate support for the State Department, then we can't present the kind of comprehensive approach overseas to national security issues that are essential to success. Gen. James Mattis, whom the chairman and I both know, said: ''If you don't fund the State Department fully, then I need to buy more ammunition.''

There is a symbiotic relationship between our diplomatic activities, our national defense activities, our law enforcement activities, and our Treasury activities, because if we are truly to interrupt these terrorist networks, we have to go after their financing. That is done through the Department of Treasury. This whole-of-government approach to national security has to be recognized, and it is not recognized if we allow the Budget Control Act to continue to be operational on the nondefense side but avoid it on the defense side because we have access to the overseas contingency fund.

Also, I think we are going to see going forward, as we have seen before—and we are saying this OCO funding is for 1 year. But I think we are doing a little bit of a wink-wink, don't worry; we are not going to pull $40 billion out of the Defense bill in the 2017 budget. We couldn't do that. What we are doing, though, is we are sort of inviting the ingenious use of OCO funding in the years ahead, and I think we will see increasingly more esoteric and exotic things in OCO funding because that is where the money is.

If you have a program that you need to get funded and it has a connection to Defense—and in some cases doesn't even need to be Defense. Senator MCCAIN and I were chatting at the hearing about the significant amount of medical research run through the Department of Defense. One reason is because there was money available back in the 1980s for defense spending that wasn't available on the domestic side, and that funding found its way into Defense.

So I think there are several reasons we have to take a different approach. My approach in the committee was, I thought, straightforward. The President recognizes we need these resources for national defense. We recognize we need the resources for national defense, but I believe we should budget honestly and directly, and initially that was our approach in the Budget Committee. Let's put it in the base, and let's take the President's $50 billion—which is the best estimate by the Department of Defense of what we really need for overseas contingency—and let's do that.

So my proposal is certainly just to fence the additional OCO funds until we could, in fact, collectively, as a Congress—what we have to do and what so many people on both sides have argued—until we could repeal, reform, modify, extend the Budget Control Act, much as we did through the great efforts of Senator MURRAY and Congressman PAUL RYAN, which gave us the head room to actually pass legislation—not just the Department of Defense but other agencies—that allowed us to continue the work of the government and allowed us to protect the Nation. My proposal in committee did not succeed, but I would renew that request.

I think we have made great progress in the legislation. I think the last step is to get us to a position where we have essentially recognized that the BCA caps and sequestration have to be eliminated.

I would conclude by commending the chairman for all he has done to get us here, but, second, to repeat what has been said to us by every military leader. What is their first request? It wasn't for more OCO money. Their first request was to eliminate the BCA caps, eliminate the threat of sequestration. I think we have to do this, and I think we can start this process now. In fact, I would say that if we don't start this process now, if we don't send a strong signal—and my proposal would send that strong signal—then I am afraid we will just be victims of the calendar. Before we get to the BCA, we will have tough choices to make about this bill that we don't have to.

So I urge consideration when the amendment comes up.

I yield back to the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Rhode Island, my friend Senator REED, for his thoughtful analysis of the legislation before us. Again, it has been not only a pleasure but an honor for me to have the opportunity to work with him on the issues that are so important to our Nation—none more important.

I am told by the majority leader that he would like to have this legislation completed by the end of next week. That means we have a lot of work to do. We already have a number of amendments that have been filed. I would ask my colleagues to have their amendments in, hopefully, by, say, tomorrow afternoon, when the Senator from Rhode Island and I will ask unanimous consent that no further amendments be considered. We want to give every Senator an opportunity to have their amendments thoroughly vetted and debated and voted on, if that is their desire. That means we have a lot of work to do. I think we will be considering an amendment this afternoon from Senator PORTMAN, and we would like to move forward from there.

So I ask the indulgence of my colleagues that if they do want debate and a vote on their amendments, that they be prepared to come to the floor to do so. Again, on filing of amendments, we would like to have all pending amendments in, in the next 24 hours, so we can have a finite number of amendments for the legislation that is pending today.

I thank all of my colleagues for their cooperation. We look forward to discussion and debate and, I am sure, will come out with a better result.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON. Mr. President, I agree with the Senator from Rhode Island, Mr. REED, the ranking member. There is a lot of good stuff in here, but there is budgetary fakery in here. I want to, in my words, describe this budgetary fakery. But before I do, I want to commend the chairman, Senator MCCAIN, and Senator REED for how they have conducted the committee. I thank them for their professionalism. They show how two leaders of opposite parties can get along, and Lord knows we need a lot more of that around here.

But for this budgetary issue, Senator REED and I would be voting for this on the final passage coming out of the committee. I, too, will be supporting Senator REED's amendment to try to straighten out some of this budgetary trickery. Let me say that in front of our committee, we have had general after general and admiral after admiral and the top enlisted folks come in and say that sequestration is harming the national security of this country. When we do that, it puts us at a risk that the American people would find intolerable if they knew what was going on. Now, let me see if, in my words, I can describe what this is.

After Senator MURRAY and Congressman RYAN put together a bipartisan budget—and for 2 years this artificial ceiling, like a meat-ax approach, sequestration, across the board was enacted to be implemented over the next several years, not a budgetary strategy of program by program but a meat-ax approach across the board, regardless of the importance of the program.

Their bipartisan budget lifted that for 2 years. We are at the end of that 2-year period, so that sequestration is kicking back in. That is why we need to get rid of it. We need to get rid of it not only for defense but nondefense as well. I will talk about that in a second. But in defense, it now kicks in and limits the overall spending for the Department of Defense. But we know we have to spend more than that.

So this defense bill, which Senator REED and I voted against, takes operational and readiness funds out of the Department of Defense request, which is a major part of the defense of the country. You want your troops to be operationally ready so that we can fight two wars if we have to simultaneously. But they take that money—that funding—out of the defense budget, and they put it over here in this special account that is not counted against the budget caps, which is an account for conducting the war originally in Iraq, then Afghanistan, and primarily for purposes of funding Afghanistan now.

As Senator REED has very appropriately and accurately discussed, if you do that, first of all, this is nothing but budgetary fakery to meet an arbitrary cap on budgets, because you are spending a lot more than that ceiling. You are just spending it over here on something that is off budget, and the total amount that is moved over is about $39 billion. In that account, there is approximately $50 billion already for conducting the war in Afghanistan. But now we are going to take operational readiness for the entire Department of Defense and pull it over here.

If we are going to be straight with what we are spending so that we really know what we are spending, why don't we keep it in the budget and let the total budget rise instead of having an artificial ceiling so we know what we are spending? Senator REED is concerned that if you do that and you are spending it over here, then in future years, as this continues to stay there, we are not going to be able to show that operational readiness is something that ought to be a normal part of the funding of the Department of Defense, as it has been for years and years.

That is basically what is going on. Military strategy is not just dependent on defense spending, but it is also dependent upon nondefense national security spending, which at this point is not even being addressed. What will the generals and the admirals tell you? They will tell you that a strong national economy is one of the most important of all the strengths of our country to be able to project American military strength. And as a result, if we continue to budget like this, not only in defense but in nondefense as well, in nondefense areas that directly affect defense—I mean the Coast Guard, the CIA, the FBI, the DEA, Customs and Border Protection, air traffic control, TSA—then all of these areas in the Federal Government are going to be under this artificial meat-ax approach of cutting across the board, and all of those agencies directly affect the national security.

So what we have been doing is artificially avoiding what is the obvious. It is sequestration. It is this meat-ax cut across the board. I want us, as we discuss this budget—now highlighted first by Senator REED—to start talking about how we are going to get rid of the sequester. We did it in the bipartisan Murray-Ryan budget over 2 years ago. We need to do it again. Otherwise, we are going to be wasting our time working on bills that at the end of the day may well not get the 60 votes to proceed to final passage or we will have a veto by the President. So we need to fix the budget caps for defense and nondefense spending. If we have bleeding in an artery, we do not need a Band-Aid.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

USA FREEDOM ACT

Mr. MERKLEY. Mr. President, yesterday we passed the USA FREEDOM Act, and it was quickly signed by our President because it was so important to put it into place. It contained two items that I want to draw particular attention to. One is that there should be no secret spying on U.S. citizens here in the United States of America. The second is that there should be no secret laws here in the United States of America.

These two items are very closely connected together. Our Nation was founded upon the principles of liberty and freedom. Fundamental to the exercise of those principles is the right to privacy, to be free from unreasonable intrusions. This right is central to all other rights protected in the Constitution, especially to the freedom of speech, the freedom of assembly, and the freedom to petition our Government.

Our sense of privacy and to be secure in our homes and secure with our records goes back to common law in England. It was in 1767 that the Earl of Chatham, when he was debating the cider tax, said:

> The poorest man may in his cottage bid defiance to all the forces of the Crown. [His cottage] may be frail, its roof may shake; the wind may blow through it; the storms may enter, the rain may enter, but the King of England cannot enter.

Certainly, that is the spirit that infused the Fourth Amendment of our Constitution. That amendment says: ''The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . .''

We need to ensure that our security apparatus, our law enforcement, and our intelligence officers have the tools they need to enact the efforts to keep America secure. But in the process, we cannot sacrifice our constitutional rights as American citizens. There should be no secret spying on Americans and no secret law in a democracy. So how did we end up in that place—the place that I am so glad we took a major stride toward remedying yesterday?

It goes back to section 215 of the PATRIOT Act. This Act was passed after the attacks on 9/11. I was not here in the Senate, but it said that our government can access business records or tangible things if it shows that there is a statement of facts showing that there are reasonable grounds to believe that those things are relevant to an authorized investigation.

That certainly mimics the second half of the Fourth Amendment, which goes on to say that ''no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.''

The responsibility of the government was to prepare a statement of facts, and those statements of facts had to show reasonable grounds and had to show that the things sought were relevant to an authorized investigation.

Each one of those words had a significant influence in constraining the potential for the government to collect business records or, particularly, as we came to learn, to collect phone records on American citizens. However, a problem developed, and that is that a secret court was created here in America, a secret court called the FISA Court, or the Foreign Intelligence Surveillance Court. That secret court could interpret the common language of the law, and its interpretations were not disclosed to the U.S. public. So in that process of taking the language of the law that has a clear set of standards and then interpreting it, the court created secret law—secret law that was not disclosed to the citizens of the United States.

This is an enormous risk to democracy—a court with no scrutiny and, quite tragically, no presentation of opposing views from the position presented by the government. What kind of court is it that allows no presentation of an opposing view to the view of the government? That is a court that can create tyranny of the government by secretly reinterpreting the plain language of the law. That is exactly what happened.

Let's think about how this then went forward. Back in December 2012, I proposed an amendment, and that amendment said that there can be no secret law in America; that if the FISA Court makes an interpretation of terms, that interpretation of those terms has to be made public.

Here we have a representation of the importance of shining a light on that secret court, disclosing to the public how it interprets the law and thereby changes the meaning of the law. And what did this court do? This court tipped those terms and said ''authorize investigation.'' That can mean anything that happens in the future, which, of course, makes that term meaningless. It means that there is no authorized investigation. It is just a fictional possibility of the future—nothing existing right now. And then it took the term ''relevant to an authorized investigation,'' and it said that relevant is irrelevant. You have to show no connection, one or two places removed, in order to secure the right to access the papers, the business records, the phone records of U.S. citizens.

So this secret court here in America, the FISA Court, created secret law, wiped out the plain meaning of section 215, put its own interpretation in place, and told no one. This is absolutely unacceptable. That is why I put forward the amendment in December of 2012 that there is no secret law amendment, that this is unacceptable, that we must have disclosure of whatever that court finds so that the public can be informed, so that legislators can be informed, so that we can have a debate on whether that interpretation is consistent with what the legislature intended—what the Senate and the House intended—and consistent with what the President intended when he signed that law.

That amendment did not get a debate at that time in 2012, but the chair of the Intelligence Committee pledged to work with me to ask our government to declassify those opinions of the FISA Court, and she did. I thank very much the senior Senator from California, the former chair of the Intelligence Committee, for her help in doing that. And some of those records, some of those opinions, and some summaries of the interpretation of the law were declassified. That was a step forward, but it should not be dependent on the whim of the executive branch as to whether secret law exists in our country.

So I continued to press forward. And then we had a situation occur. In June 2013, Edward Snowden disclosed the existence of the cell phone program. I could not explain in December of 2012 why it was so important to end secret law, but after Edward Snowden's disclosures, I could explain it.

In fact, when the National Security Agency chief, Keith Alexander, was testifying, which was shortly after that disclosure, I proceeded to pull out my cell phone and ask the chief: What authorized investigation gives you the authority under section 215 to access my, Senator MERKLEY's, cell phone records? He was unable to answer that question but said he would seek legal consultation in order to explain what investigation showed that there was a relevant connection and what statement of facts would justify it. But I never got an answer because there was no answer because the government was collecting everything under this secret reinterpretation of law.

Yesterday, we ended the era of secret law in America. Yesterday, my no secret law act was incorporated into the USA FREEDOM Act and was signed by the President of the United States. This law says the executive branch must declassify opinions of the FISA Court or, if they find that the exact opinion poses a security risk because of details enclosed therein, must declassify summaries or at a minimum must summarize the significant constructions and interpretations of law found by the FISA Court. That is the heart of it. We are not asking that classified information about facts of a case that could endanger our national security be disclosed. We are asking that interpretations and constructions of law be disclosed so that we have no secret law in America, and that is what is required by the act we passed yesterday.

In conclusion, we must not have secret laws in America. We must not have a secret court that has no opposing point of view presented. And when it makes interpretations of law, it must be disclosed to American citizens, who have every right as citizens to know what the law means and to be able to argue whether they like that interpretation, dislike it, think the law should be supported or the law should be changed.

May we never again allow a secret court to authorize secret spying on U.S. citizens under the cover of secret law.

What we did yesterday—incorporating the no secret law act into the USA FREEDOM Act—was important. To paraphrase William Pitt, the humblest American, no matter his wealth or her income or his status within the community—that no American may be in a situation where he may be unable to say to the U.S. Government: Here in my home, within these walls, however modest, you, the government, may not enter.

I thank the Presiding Officer.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I ask unanimous consent that the Senate remain in session for at least 5 additional minutes while I speak.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BURR. Mr. President, I couldn't let the statements that were just made go without a degree of fact check. There is no secret court. A secret court means we don't know it exists. Every Member of the U.S. Senate and every American knows that the FISA Court exists. The FISA Court exists because when the Senate of the United States takes up classified, top-secret legislation, we shut these doors, we clear the Gallery, and we cut the TV off because it can't be heard in public. As a matter of fact, every court in the country operates in secret when they have sensitive information that can't be shared.

I wish my colleague would stay.

The information can't be shared because it can't be public. There are some things that don't meet that classification.

And to get up here and talk about secret courts and secret laws—we pass the laws. The courts enforce the laws, and they are challenged. We have committees and Members who do oversight. It is unfactual to stand on this floor and say we have secret courts and secret laws. That is why the Senate and the House made a mistake this week.

If the Senator were really concerned about privacy, my friend would be on the floor arguing that we eliminate the CFPB, a Federal agency created—not even funded by Congress—that collects every piece of financial transaction on the American people today. They get every data point from credit card companies and the credit bureau, they search the student loan information, and they download all of that into metadata within the CFPB. No Member is down here complaining about that. That is the greatest intrusion of privacy on the American people that could ever happen. It was known upfront, so they made sure it wasn't funded by Congress and made sure we didn't have any oversight responsibilities. That is why they put it under the guidance of the Federal Reserve.

The President of the United States could have ended section 215 at any

time. He had the power. But the President understands that this program works and that there was public pressure to move this data from the NSA to the telecom companies, which is probably a greater concern about privacy than to have this controlled and supervised within the NSA.

The Senator mentioned Edward Snowden—a traitor to the United States. My colleague held him up as though he were a prize because he had come out with this publicly. What do the American people think when we come out here and take some of the most sensitive information and suggest everybody ought to know it? The American people look at us and ask us to keep them safe and do whatever is within the law to accomplish that.

And there is one thing that has never been contested on section 215: It lived within the letter of the law or it lived within the letter of the Presidential directive.

We had a debate, and that is behind us. But to come out here and suggest that there is a secret court and that there are secret laws and that yesterday they eliminated all of that—no, they didn't. No administration in their right mind is going to publicly release those classified and top-secret documents that go to the FISA Court because it would put Americans and foreigners at risk.

I have tried to explain to my colleagues that terrorists are not good people. We can't hug them and all of a sudden change their intent. They want to kill people. And in most cases, we don't find them through association with Boy Scouts; we find them by actually putting agents into a system where they work sources and collect intelligence. Why would we go out and give terrorists the roadmap of how we do things?

I will end on this. As everyone can tell, when somebody gets up and talks about something that just is not true, it can't go without correction.

What we have done in the last 2 months is given every terrorist in the world a roadmap as to exactly how the United States picks up individuals in the United States who might communicate with terrorists abroad.

I will say for the last time what section 215 did. Section 215 was a database that stated the NSA—the only way that any number could ever be queried was if we had a foreign telephone number that we knew was a terrorist telephone number, we could go to the FISA Court and say: We would like to test this against telephone numbers—not Americans; telephone numbers. It was a database that only had telephone numbers, the date of the call, and the duration of the call. The court would give us permission when we were looking to see if there was an American telephone number that actually talked to a known terrorist. And if it did, we turned it over to the Federal Bureau of Investigation and said: You might want to look at this person. They then went through a normal court process. If they wanted to find the person's name and get additional information, that is what they did. Some called that an invasion of privacy. I will tell everyone that is not the courts' interpretation. The courts ruled that when my telephone information goes to a telephone company, I have no expectation of privacy. None. That is the law.

The reality is that we are collecting telephone numbers. It has no personal identification on it. I don't know how it would be an invasion of privacy when we don't know who it is. And that threshold is met when the Bureau goes to the court and says they have a different concern about the individual, and the court will then rule on it.

But to believe that the FISA Court does anything different from the Senate of the United States or different from any court in the country when they are faced with classified or secret information—and that is, they shut it down—is wrong. It is just plain wrong. It is important for the American people to understand that there are ramifications to stupid decisions, even by Congress.

It is my hope that this program will work as it is currently designed. But there is no mistake that we have given terrorists every reason to never use a cell phone or a landline again, especially those who are in our country and intend to carry out some act like the gentleman from Boston did yesterday. He pulled a knife on two officers who just wanted to talk to him because he had been under 24/7 surveillance for days. If the news reports were correct, he intended to behead a Boston police officer.

I think the American people want our law enforcement folks to be in that position. If we take away their tools, we will not be able to do it. What we did yesterday was we took some of the tools away. We didn't take all of them away. My hope is that this body will think clearly in the future about the tools we provide to allow this to happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

For the Senator's information, the Senate has an order to recess until 2 p.m.

Mr. MERKLEY. Mr. President, I ask unanimous consent to speak for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Oregon.

Mr. MERKLEY. Mr. President, when colleagues come to the floor and contend that there have been no secret courts in America, that there has been no secret law in America, that the administration of section 215 matched the plain language of the laws adopted by this body, they are wrong on all three counts.

Mr. BURR. Will the Senator entertain a question?

Mr. MERKLEY. When I have completed my remarks, I will be happy to take a question.

And so my colleague comes to the floor and says that there is no secret law. But the fundamental understanding of law is that there is the plain language of the law and there is the interpretation of that by the court. It is only through the combination of those two things that you can know what a law means. So if you have the plain language but you don't have the interpretation that has been assigned by the courts and used to adjudicate cases, then in fact you have secret law because none of us know what the words mean.

If you look at the plain language of section 215, it doesn't say: Here are restrictions on how the government examines a body of information, interrogates that body of information, and analyzes that body of information. No. The language is completely about how the government collects that information and whether they can collect that information. It sets a series of clear standards for collecting that information. It says that information cannot be collected unless there is stated analysis, a set of facts that show there is evidence that the information being sought is relevant to an authorized investigation.

Now, any common citizen knows, therefore, that the government has to do a statement of facts. They have to state what is the specific investigation, has that investigation been authorized, and is the assorted information relevant that is being requested?

Well, ''relevant'' is a very powerful term in the law. It means one or two steps removed. And that is exactly what the Second Circuit found when they looked at this issue just recently.

The court's opinion explained that as the program is being implemented, the records demanded are not those of suspects who are under investigation, which would certainly be relevant, or of people or businesses that have contact with suspects under investigation, which is one step removed and certainly would be relevant, or even, the court went on to say, of people or businesses that have contact with others who are in contact with the subjects. That would be two steps removed, and that is stretching the boundaries of what is considered relevant under the definition of the law.

The court found that the implementation of the program has extended to every record that exists. The Court found that the implementation of the law extended to every record that exists.

So if the implementation by the administration so diverged from the language of the law passed and debated in this Chamber, how did the government—the executive branch—justify its gross deviation from the plain language of the law? Well, here is how they did it. They went to a court that had been created, the Foreign Intelligence Surveillance Court, and they

said: We would like to be able to collect all the information, whether or not it is relevant, because some day, under some situation, we may want to analyze that information, and we would like to have it right at hand.

Now, had there been an adversary in this court, the adversary presenting an opposite point of view would have said: Well, not so quick, because there are standards in the case law for relevance. There are standards for what constitutes an authorized investigation. There are certainly standards for what are the means to present evidence to document this. But there was no contrary opinion in this court because the only one arguing the case with no rebuttal and no examination by any group was the government. So we have the government and a judge. That is not really the theory behind the courts. The idea is that we have an examination of an issue with both sides presented so there can be full articulation and full examination of the issues, and then a judge can decide based on full input. But, in this case, we didn't have that input. The government asked for an interpretation that would allow them to do something far different from the plain language of the law, and they got it from this secret court.

So, yes, we do have secret courts, operated with no input, and they disclose no opinions. And yes, we did have a secret law, and that ended yesterday, as it should have.

Thank you, Mr. President.

Mr. BURR. Will the Senator yield for a question?

Mr. MERKLEY. I will yield.

Mr. BURR. I ask unanimous consent for 1 additional minute before the Senate adjourns.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BURR. My question to the Senator is this: Did he know the FISA Court existed?

Mr. MERKLEY. The existence of the court——

Mr. BURR. It is a simple yes or no answer. Did the Senator from Oregon know the FISA Court existed?

Mr. MERKLEY. The Senator from North Carolina can ask a question, and I get to answer the question.

Mr. BURR. Well, no, you don't. I asked the question, but I did not yield the Senator from Oregon the time.

Mr. President, regular order.

I don't want to take any more of the Senate's time, and I certainly don't want to take any more of my colleague's time.

The fact is that he knows the court existed. Congress has reauthorized section 215 of the PATRIOT Act. The FISA Court has reauthorized it. They reauthorized it. They are asked every 90 days, and they ruled 41 times to allow section 215 to exist.

Mr. MERKLEY. Mr. President, will my colleague yield for a question?

Mr. BURR. I will be happy to yield for a question.

Mr. MERKLEY. Were the opinions of this court, established by law—and, yes, it is transparent to the public that the court exists. But the question of secrecy is not one of whether it exists; it is a question of whether the process is open in any feasible way to debate between two points of view. Did the Senator from North Carolina know that the opinions of the court, including interpretations of the law, were never disclosed to the American public and were, in fact, kept secret?

Mr. BURR. I actually do know that.

Mr. MERKLEY. Well, thank you, because that does show that in fact there were secret——

Mr. BURR. The Senator asked his question, and I answered, and I still control the time. Thank you.

Now, clearly, it is evident that if we say something wrong enough times, people start to believe it. It is not a secret court. It is not a secret law. The President knows about it, and Members of Congress know about it. We have voted on it. We know what goes on. Fifteen Members of this body have oversight responsibility over the program. We do our job, and we do it well.

Now, we may disagree with what tools we use to try to defeat terrorism in this country, and clearly the Senator and I have a big canyon between us. But I have to tell my colleagues that America expects the Senate and the Congress of the United States and the President of the United States to defend them. I am going to continue to do everything I can to make sure law enforcement and the intelligence community have the tools to do their job because their job is a big one and the threat is big, and for people to ignore that today is irresponsible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, the people of the United States expect the Constitution to be upheld and the principles of the Fourth Amendment. They expect that the law that is passed on this floor will be implemented in an appropriate fashion and consistently, and when it is not, our liberty is diminished, our freedom is diminished, and our privacy is diminished.

Indeed, what we did yesterday with the USA FREEDOM Act was to end a system in which a court, in secrecy, changes the meaning of the law and does not expose it to the American public. That is a very important improvement, taking us back to the democracy that we are all a part of and that we all love.

Thank you, Mr. President.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2 p.m. today.

Thereupon, the Senate, at 1:21 p.m., recessed until 2:01 p.m. and reassembled when called to order by the Presiding Officer (Mr. TOOMEY).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016—Continued

The PRESIDING OFFICER. The Senator from Washington.

(The remarks of Mrs. MURRAY pertaining to the introduction of S. 1494 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mrs. MURRAY. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Ms. CANTWELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. CANTWELL. Mr. President, I ask unanimous consent to speak for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXPORT-IMPORT BANK

Ms. CANTWELL. Mr. President, I come to the floor, and I know we are talking about the Defense bill. I know my colleagues are trying to work things out as it relates to the Defense bill, but I am just as concerned about the reauthorization of the Export-Import Bank—a credit agency that helps small businesses in the United States of America—which is expiring at the end of this month, June 30.

As we had discussions on the trade promotion authority act, I was very concerned that we were going to be passing trade policy while at the same time allowing very important trade tools to expire. I still remain very concerned about the small businesses that are here in the Capitol today and that have given much testimony at various hearings—yesterday in the Senate Banking Committee and today in the House Financial Services Committee—about the need for this type of credit agency that helps small businesses ship their products to other countries that are new market opportunities for them.

The reason why this is so important is because other countries have credit agencies—if you will, credit insurance. You are a small business. You want to get your products sold in developing markets. You can't find conventional banking or you can find conventional banking but that bank says it is not going to insure these losses. Thus, what has emerged for the United States of America, Europe, China, Asia, many parts of the world, is what is called credit insurance.

That credit insurance takes the conventional banking and says: We will help secure that conventional banking loan. So that if you are a manufacturer in, say, Columbus, OH, making machinery and you are selling that in China, you actually have an opportunity to sell that product, use commercial banking in Ohio, have that guaranteed